

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FREE SPEECH COALITION, INC., et al.

Plaintiffs,

v.

THE HONORABLE ERIC H. HOLDER, JR.,  
*in his official capacity as Attorney General  
of the United States,*

Defendant.

CIVIL ACTION NO.: 09-4607

The Honorable Timothy J. Savage

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2009, upon consideration of Plaintiffs' Motion for Admission *Pro Hac Vice* of attorney J. Michael Murray as Plaintiffs' counsel in the above-captioned action, it is hereby ORDERED that said Motion is GRANTED.

\_\_\_\_\_  
Savage, J.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FREE SPEECH COALITION, INC., et al.	)	CASE NO. 09-4607
	)	
Plaintiffs,	)	JUDGE TIMOTHY J. SAVAGE
	)	
-vs-	)	
	)	<u>MOTION FOR PRO HAC VICE</u>
THE HONORABLE ERIC H. HOLDER, JR.,	)	<u>ADMISSION OF J. MICHAEL MURRAY</u>
Attorney General,	)	<u>AS PLAINTIFFS' COUNSEL IN THE</u>
	)	<u>WITHIN ACTION WITH VERIFICATION</u>
Defendant.	)	

Kevin E. Raphael, a member in good standing of the Pennsylvania bar, moves pursuant to Local Rule of Civil Procedure 83.5.2(b) and § I. E. of *Judge Savage's Scheduling and Motion Policies and Procedures*, for admission *pro hac vice* of J. Michael Murray of Berkman, Gordon, Murray & DeVan, in Cleveland, Ohio, as Plaintiffs' counsel in this action challenging the constitutionality of 18 U.S.C. § 2257, 18 U.S.C. § 2257A and their implementing regulations, under the First, Fourth, and Fifth Amendments to the United States Constitution.

The grounds for this Motion follow.

**ADMISSIONS**

J. Michael Murray has been a member in good standing of the bar of the State of Ohio (Bar No. 0019626) since his admission in November, 1976. He was admitted *pro hac vice* as counsel for plaintiffs in the United States District Court for the Eastern District of Pennsylvania in the matter of *Conchatta, Inc., et al v. Evanko*, Case No. 2:01-cv-01207 (Fullam, J.). Murray has also been

admitted to and is a member in good standing of the following federal courts:

- U.S. Supreme Court (3/29/82)
- U.S. Court of Appeals for the Second Circuit (7/29/93)
- U.S. Court of Appeals for the Third Circuit (4/26/01)
- U.S. Court of Appeals for the Fourth Circuit (5/21/01)
- U.S. Court of Appeals for the Fifth Circuit (1/27/93)
- U.S. Court of Appeals for the Sixth Circuit (10/3/78)
- U.S. Court of Appeals for the Seventh Circuit (11/3/04)
- U.S. Court of Appeals for the Eighth Circuit (10/9/98)
- U.S. Court of Appeals for the Ninth Circuit (7/16/90)
- U.S. Court of Appeals for the Tenth Circuit (12/14/05)
- U.S. Court of Appeals for the Eleventh Circuit (3/16/05)
- U.S. District Court for the Northern District of Ohio (1976)
- U.S. District Court for the Southern District of Ohio (7/11/01)
- U.S. District Court for the Northern District of New York (6/8/01)
- U.S. District Court for the Western District of Michigan (4/7/03)
- U.S. District Court for the Northern District of Texas (2/18/04)
- U.S. District Court for the Northern District of Indiana (1/8/04)
- U.S. District Court for the Eastern District of Texas (11/13/07)
- U.S. District Court for the Western District of Tennessee (1/8/08)

#### **WHY COUNSEL IS ESPECIALLY QUALIFIED TO PARTICIPATE IN THIS CASE**

J. Michael Murray is a 1972 graduate of the University of Notre Dame and was awarded his J.D., *summa cum laude*, from Cleveland Marshall College of Law in 1976. He is a Fellow of the American College of Trial Lawyers and past president and national chairman of the First Amendment Lawyers Association. Since 1993, he has been listed in *Best Lawyers in America* under First Amendment law.

Mr. Murray has practiced law for more than 32 years with the firm now known as Berkman, Gordon, Murray and DeVan. He has been a vigorous advocate for First Amendment rights in cases involving free speech rights. Of particular relevance to this case, which challenges 18 U.S.C. § 2257, 18 U.S.C. § 2257A and their implementing regulations, federal criminal statutes that require producers of sexually explicit expression to create and maintain age verification records in connection with their expression under the First Amendment, Mr. Murray was lead counsel in

*Connection Distributing Co. v. Holder*, 557 F.3d 321 (6th Cir. 2009) (en banc) *cert. denied*, Case No. 08-1449, October 5, 2009, a case involving First Amendment challenges to 18 U.S.C. § 2257 litigated over the course of fourteen years on behalf of the publisher of a sexually explicit swingers' magazine and its subscribers. See *Connection Distributing Co. v. Keisler*, 505 F.3d 545 (6th Cir. 2007) vacated, sub nom. *Connection Distributing Co. v. Mukasey*; *Connection Distributing Co. v. Reno*, 2002 WL 31119685 (6th Cir. 2002); *Connection Distributing Co. v. Reno*, 154 F.3d 281 (6th Cir. 1998) *cert denied* 526 U.S. 1087 (1999). Thus, Mr. Murray is uniquely qualified to represent the plaintiffs in this case in challenging these statutes on their behalf.

Mr. Murray was also lead counsel in *Conchatta Inc. v. Miller*, 458 F.3d 258 (3rd Cir. 2006), an important First Amendment precedent, striking down Pennsylvania's liquor regulations restricting adult entertainment on First Amendment grounds.

Mr. Murray has participated as counsel in numerous reported decisions involving First Amendment issues throughout the country. The following is a list of many of those cases:

**Federal Appellate Court Decisions**

*Annex Books, Inc. v. City of Indianapolis*, \_\_ F. 3d \_\_ 2009 WL 2855813 (7<sup>th</sup> Cir. 2009); *Connection Distributing Co. v. Holder*, 557 F.3d 321 (6th Cir. 2009) (en banc) *cert. denied*, Case No. 08-1449, October 5, 2009; *Connection Distributing Co. v. Keisler*, 505 F.3d 545 (6th Cir. 2007) vacated, sub nom. *Connection Distributing Co. v. Mukasey*; *Connection Distributing Co. v. Reno*, 2002 WL 31119685 (6th Cir. 2002); *Connection Distributing Co. v. Reno*, 154 F.3d 281 (6th Cir. 1998) *cert denied* 526 U.S. 1087 (1999)  
*J. L. Spoons, Inc. v. Dragani*, 538 F.3d 379 (6th Cir. 2008), *reh'g and reh'g en banc denied*, No. 07-3178, *cert. denied*, Case No. 08-1144, October 5, 2009  
*O'Neill v. Coughlan*, 511 F.3d 638 (6th Cir. 2008), *reh'g and reh'g en banc denied*, No. 07-3206 *cert. denied*, \_\_ U.S. \_\_; 129 S.Ct. 570 (2008)  
*Abilene Retail 30, Inc. v. Board of Commissioners*, 492 F.3d 1164 (10th Cir. 2007)  
*Illusions-Dallas Private Club, Inc. v. Steen*, 482 F. 3d 299 (5th Cir. 2007)  
*Passions Video, Inc. v. Nixon*, 458 F.3d 837 (8th Cir. 2006)  
*Conchatta Inc. v. Miller*, 458 F.3d 258 (3rd Cir. 2006)  
*Giovani Carandola, Ltd. v. Fox*, 470 F.3d 1074 (4<sup>th</sup> Cir. 2006)  
*ETW Corp. v. Jireh Pub., Inc.*, 332 F.3d 915 (6th Cir. 2003)  
*Giovanni Carandola, Ltd. v. Bason*, 303 F.3d 507 (4th Cir. 2002)  
*Rock and Roll Hall of Fame and Museum, Inc. v. Gentile Productions*, 134 F.3d 749 (6th Cir. 1998)

*Adult Video Ass'n v. U.S. Dept. Of Justice*, 71 F.3d 563 (6th Cir. 1995)  
*United States v. Jenkins*, 46 F.3d 447 (5th Cir. 1995)  
*Triplett Grille, Inc. v. City of Akron*, 40 F.3d 129 (6th Cir. 1994)  
*Zilich v. Longo*, 34 F. 3d 359 (6th Cir. 1994)  
*White Fabricating Co. v. United States*, 903 F.2d 404 (6th Cir. 1990)  
*Turoso v. Cleveland Municipal Court*, 674 F.2d 486 (6th Cir. 1982)  
*Sovereign News Co. v. Falke*, 674 F. 2d 484 (6th Cir. 1982)

### **Federal District Court Decisions**

*Carolina Pride, Inc. v. McMaster*, \_\_ F.Supp.2d \_\_, No. 3:08-CV-04016-CMC, 2009 W.L. 2524705 (D.S.C., August 13, 2009);  
*Abilene Retail #30, Inc. v. Six*, \_\_ F.Supp. \_\_, No. 09-CV-2195-JAR, 2009 W.L. 1850597 (D.Kan., June 26, 2009)  
*Imaginary Images Inc. v. Evans*, 593 F.Supp.2d 848 (E.D.Va. 2008)  
*Entertainment Productions, Inc. v. Shelby County*, 545 F. Supp. 2d 734 (W.D. Tenn. 2008)  
*Giovanni Carandola, Ltd. v. City of Greensboro*, 457 F.Supp.2d 615 (M.D.N.C. 2006)  
*Ravenna Rd. Management v. City of Twinsburg*, 450 F. Supp. 2d 782 (N.D. Ohio 2006)  
*Giovanni Carandola, Ltd. v. Fox*, 396 F.Supp.2d 630 (M.D.N.C. 2005)  
*J. L. Spoons, Inc. v. Morckel*, 314 F. Supp. 2d 746 (N.D. Ohio 2004)  
*Annex Books, Inc. v. City of Indianapolis*, 333 F. Supp. 2d 773 (S.D. Ind. 2004)  
*Giovanni Carandola, Ltd. v. Bason*, 147 F.Supp.2d 383 (M.D.N.C. 2001)  
*Franklin Jefferson, Ltd. v. City of Columbus*, 211 F. Supp. 2d 954 (S.D. Ohio 2002)  
*J.L. Spoons, Inc. v. O'Connor*, 194 F.R.D. 589 (N. D. Ohio 2000)  
*Pennsylvania Pride, Inc. v. Southhampton Tp.*, 78 F. Supp. 2d 359 (M.D. Pa. 1999)  
*J. L. Spoons, Inc. v. Brown*, 40 F. Supp. 2d 902 (N.D. Ohio 1999)  
*J.L. Spoons v. City of Brunswick*, 18 F.Supp.2d 782, (N.D. Ohio 1998)  
*J.L. Spoons v. City of Brunswick*, 18 F.Supp.2d 775 (N.D. Ohio 1998)  
*West Virginia Pride, Inc. V. Wood County, W.Va.*, 811 F.Supp. 1142 (S.D. W.Va. 1993)  
*Ferner v. Village of Sheffield*, 656 F. Supp. 1017 (N.D. Ohio 1987)

Mr. Murray has also litigated many First Amendment matters in the state courts of Ohio and in the courts of other states.

In addition to his First Amendment advocacy, Mr. Murray's trial experience spans a wide variety of cases including state and federal criminal prosecutions; civil rights actions involving employment discrimination, sexual harassment, and overreaching by law enforcement; personal injury, product liability and medical malpractice suits; and various business litigation matters at the trial and appellate levels.

**PLAINTIFFS' REASONS FOR RETAINING J. MICHAEL MURRAY AND BERKMAN, GORDON, MURRAY & DeVAN**

Mr. Murray and his firm were selected to represent the plaintiffs in filing a federal lawsuit challenging the constitutionality of these laws after a process initiated by the plaintiff Free Speech Coalition in which a number of law firms nationwide were considered and interviewed. After a thorough review of the many candidates for the position, J. Michael Murray and his firm were selected to represent Plaintiffs in this case, because of their experience in First Amendment litigation, in general, and in litigating the constitutionality of 18 U.S.C. § 2257, in particular.

Plaintiffs contend that Mr. Murray and his firm are especially qualified to represent them in this litigation.

Respectfully submitted,

Date: 10/09/09

/s/ Kevin E. Raphael  
KEVIN E. RAPHAEL (72673)  
KER@Pietragallo.com  
J. PETER SHINDEL, JR. (201554)  
JPS@Pietragallo.com  
PIETRAGALLO GORDON ALFANO BOSICK &  
RASPANTI, LLP  
1818 Market Street, Suite 3402  
Philadelphia, Pennsylvania 19103  
(215) 320-6200  
(215) 981-0082 (Facsimile)

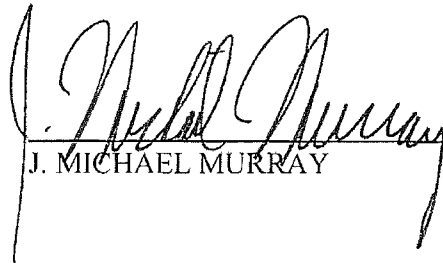
Attorneys for Plaintiffs

**DECLARATION**

J. MICHAEL MURRAY states, under penalty of perjury, that the information contained in the foregoing Motion for *Pro Hac Vice* Admission of J. Michael Murray is true and accurate.

Date:

10/9/09

  
J. MICHAEL MURRAY

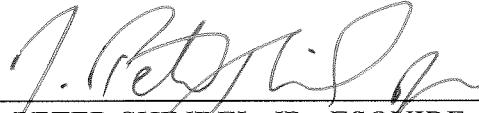
**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of Plaintiffs' Motion for Admission of J. Michael Murray *Pro Hac Vice* was served on this date on the individuals and in the manner described below

**VIA ECF AND CERTIFIED MAIL**

The Honorable Eric H. Holder, Jr.  
Attorney General of the United States  
United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Michael L. Levy, Esquire  
615 Chestnut Street  
Suite 1250  
Philadelphia, PA 19106

  
\_\_\_\_\_  
J. PETER SHINDEL, JR., ESQUIRE

*Attorney for Plaintiffs*

DATED: October 9, 2009